

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.MC.No. 3614 of 2006()

CC.1213/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA
.....

PETITIONERS: ACCUSED:

1. THE LORD KRISHNA BANK REPRESENTED
BY ITS DEPUTY MANAGING DIRECTOR
V.K. GUPTA, LORD KRISHNA BANK,
INDIAN EXPRESS BUILDING, ERNAKULAM.
2. P.K. SOMAN, DEPUTY GENERAL,
LORD KRISHNA BANK.
3. BRANCH MANAGER, LORD KRISHNA BANK,
CHERTHALA (N.V. JOSEPH).

BY ADV. SRI.K.GOPALAKRISHNA KURUP

RESPONDENTS: COMPLAINANT & STATE:

1. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. KANAKAMMA SATHEENDRANATH,
W/O.SATHEENDRANATH, KANNATHU HOUSE,
POLLETHAI P.O., VALAVANADU, ALAPPUZHA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SMT.T.D.RAJALAKSHMI
SRI.RANJIT SREENIVAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3614 OF 2006

Dated this the 6th day of December, 2006.

ORDER

The petitioners are accused 1, 2 & 4 in a prosecution under Section 420 read with 34 I.P.C. They are, the Lord Krishna Bank represented by its Managing Director, its Deputy General Manager and the Branch Manager, Cherthala. Cognizance has been taken on the basis of a private complaint filed by the 2nd respondent herein. The complaint was initially got enquired under Section 202 Cr.P.C by the police. The police had submitted a report though no offence is made out. Thereafter sworn statement was recorded and then cognizance was taken.

2. The learned counsel for the petitioners submits that even if the entire allegations were accepted as gospel truth, there is no justification for issue of process against the petitioners in as much as there is no sufficient ground made out to proceed against the petitioners for any criminal offence. In these circumstances, this is an eminently fit case, where the powers under Section 482 Cr.P.C can and ought to be invoked in favour of the petitioners, contends the learned counsel for the petitioners.

3. The learned counsel for the respondent was requested to explain how the ingredients of the offence of cheating can be said to be revealed from the averments in the complaint and the assertion in the sworn statement. I have been taken through the relevant averments and assertions.

4. The crux of the allegations is that the complainant had availed a loan from the Lord Krishna Bank, the 1st accused. The loan had become sticky. It was transferred by the bank in its account as a non performing asset. After it becomes non performing, the bank is not bound to pay insurance premia and take insurance of the asset secured. The bank had admittedly sent a letter, a copy of which is produced as Annexure-VII, which has been produced along with a complaint before the learned Magistrate, in which the bank had expressed its stand that it is not bound to and shall not pay premia and take any insurance in respect of the property secured. The specific and precise allegation which can attract culpable liability, shorn of all unnecessary details is that such premia were not paid by the bank. Except this, no allegations whatsoever are raised on the relevant and crucial aspects.

5. Non payment of insurance premia on the ground that the assets secured has become non performing, that too after prior intimation to the complainant, can, according to me, by no stretch of imagination, be said to amount the offence of cheating punishable under Section 420 I.P.C. The conclusion in these circumstances is inescapable that there is no valid or reasonable cause to initiate this criminal prosecution against the petitioners. The challenge raised must in these circumstances succeed.

6. In the result:

- i) This Crl.M.C is, allowed.
- ii) C.C.No.1213 of 2006 before the Judicial First Class Magistrate Court-I, Alappuzha, in so far as it relates to the petitioner shall stand quashed.

**R.BASANT
JUDGE**

rtr/